UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

CORRECTIONS CORPORATION)	
OF AMERICA)	
)	
Respondent,)	
)	
and)	Case No. 26-CA-23180
)	
VEVRIA NELSON, an individual)	
)	
Charging Party)	

EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE ON BEHALF OF RESPONDENT CORRECTIONS CORPORATION OF AMERICA

Pursuant to the Rules and Regulations of the National Labor Relations Board, including Section 102.46 thereof, Respondent Corrections Corporation of America takes Exception to the following Findings of Fact, Conclusions of Law, and Remedy and Order of Associate Chief Administrative Law Judge William N. Cates issued in his March 27, 2009 Decision:¹

- 1. The finding that the Company violated the Act substantially as alleged in the Complaint (ALJD 2:11-12).
- 2. The finding that the Charging Party, Vevria Nelson ("Nelson"), received a certified return receipt "from the Company" (ALJD 10:15).
- 3. The finding that attachments to Nelson's February 26, 2008 grievance clearly set forth the concerns of three other licensed practical nurses ("LPNs") (ALJD 22:19-20).
- 4. The finding that the non-participation of other three LPNs at the various meetings, between February and May 2008, on Nelson's February 26, 2008 grievance did not negate the concerted nature of the grievance (ALJD 22:20-22).

The Administrative Law Judge's Decision will be designated as "ALJD page(s):line(s)." References to the hearing transcript will be abbreviated as "Tr. p. __"; and references to the General Counsel's exhibits and to Respondent's exhibits will be abbreviated as "GC Ex. __", and as "R. Ex. __", respectively.

- 5. The finding that a July 30, 2008 phone call between Nelson and a Respondent official regarding bonuses for certain nurses "clearly constitutes concerted activity protected by the Act" (ALJD 23:6).
- 6. The finding that Nelson's reference, in her August 1, 2008 grievance, to the fact that she wanted to know whether she personally would receive a bonus does not detract from a finding that her activity with respect to bonuses was concerted (ALJD 23:8-10).
- 7. The finding that the Respondent was aware of Nelson's protected concerted activity (ALJD 23:17-18).
- 8. The finding that the Respondent was on notice that Nelson was advancing the cause of others in her February 26, 2008 grievance (ALJD 23:24-25).
- 9. The finding that the return receipt for a letter written by Nelson was signed for "by a Company representative" (ALJD 23:28).
- 10. The finding that the Respondent was "fully aware of Nelson's efforts regarding the letter from its receipt by the Company and continuing thereafter" (ALJD 23:32-33).
- 11. The finding that the Respondent was aware of Nelson's involvement, along with others, regarding bonuses because Nelson was present with management representatives when those concerns were raised (ALJD 23:35-37).
- 12. The finding that the Respondent knew about Nelson's concerted activity and Nelson's involvement in that activity (ALJD 24:12-13).
- 13. The finding that a Respondent official said that Nelson was "negative a few times" and "incited the nurses" (ALJD 12:5-8).
- 14. The failure of the judge to require the General Counsel to demonstrate, as an independent element, a causal nexus or link between Nelson's concerted activity and her discharge (ALJD 24:8-13).
- 15. The finding that the Respondent knew about Nelson's concerted activity (ALJD 24:13).
- 16. The conclusion that the General Counsel made a *prima facie* showing that Nelson's concerted protected activity was a motivating factor in the Respondent's decision to terminate Nelson's employment (ALJD 24:15-16).
- 17. The finding that a Respondent official's "talking points" utilized in his exit interview with Nelson "standing alone, constitute unlawful motivation" for Nelson's discharge (ALJD 24:22-23).
- 18. The finding that Nelson's attitude, that did not fit the environment that the Respondent sought to establish and maintain, was "one of pursuing employee issues, concerns, and complaints vigorously" (ALJD 24:24-27).

- 19. The inference that Nelson's attitude "of pursuing employee issues, concerns, and complaints vigorously" was a factor in her discharge (ALJD 24:25-28).
- 20. The finding that a Respondent official's statement regarding "troublemakers" demonstrated unlawful motivation for Nelson's discharge (ALJD 24:31-35).
- 21. The finding that a Respondent official said that Nelson was "negative a few times" and "incited the nurses" (ALJD 24:35-38).
- 22. The inference that a Respondent official's alleged statement that Nelson was "negative" referred to Nelson being negative "concerning pay and working conditions" (ALJD 24:42-44).
- 23. The finding that Nelson's discussions with Respondent officials concerning bonuses for certain nurses "contributed to her discharge" (ALJD 24:42-44).
- 24. The finding that the timing of Nelson's discharge is "suspect" and indicates unlawful motivation for her discharge (ALJD 24:46–25:1).
- 25. The finding that a Respondent official's letter of recommendation indicates that Nelson was "terminated for other than her job performance or abilities" (ALJD 25:4-5).
- 26. The finding that the Respondent's discharge of Nelson was motivated, at least in part, by animus toward Nelson's concerted activities (ALJD 25:7-11).
- 27. The finding that the Respondent's contention that it discharged Nelson because of her continued harassing, disruptive, and bullying behavior, which caused other employees of the Respondent to resign and which placed the Respondent's contract with the California Department of Corrections and Rehabilitation in jeopardy, "does not withstand close scrutiny" (ALJD 25:15-18).
- 28. The finding that the incident reports prepared by other employees regarding Nelson's conduct, which included acting unprofessional and threatening toward a mental health coordinator; shouting at a co-worker in an inappropriate manner; throwing away private property of a co-worker; displaying an authoritative behavior toward co-workers creating a toxic work environment; creating low morale and stress and acting as a "saboteur and bully;" acting in a disrespectful manner toward a supervisor; engaging in a shouting match with a professional staff member; yelling and screaming at a co-worker; handling a review schedule for applicants in an unprofessional manner; and embarrassing a clinical supervisor who was trying to ascertain which inmate was experiencing chest pains, "were not factors . . . that brought about her termination" (ALJD 25:38–26:2).
- 29. The finding that "if these incidents had been as critical as the Company contends[,] some, if not all, of the incidents would have been raised with Nelson" (ALJD 26:3-4).
- 30. The finding that "none of these specific incidents were raised by" the Respondent "as a basis for [Nelson's] termination" when the Respondent's officials met with Nelson to discharge her (ALJD 26:4-6).

- 31. The finding that the Respondent "did not consider any of the above incidents, including the departure of two RNs, to warrant immediate discipline for Nelson or for that matter raising the incidents with Nelson" (ALJD 26:22-24).
- 32. The finding that the Respondent "seized upon" an altercation between Nelson and a supervisor on July 30, 2008 in order to discharge Nelson (ALJD 26:26-32).
- 33. The finding that the Respondent failed to rebut the General Counsel's *prima facie* case (ALJD 26:36).
- 34. The finding that the Respondent's reason for Nelson's discharge is "nothing more than a pretext" (ALJD 26:38).
- 35. The inference that the Respondent's true motive for Nelson's discharge was unlawful (ALJD 26:39).
- 36. The conclusion that the Respondent engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by discharging Nelson on or about August 1, 2008 (ALJD 26:45-27:1).
- 37. The Administrative Law Judge's recommended remedy (ALJD 27:5-19).
- 38. The Administrative Law Judge's recommended order (ALJD 27:31 28:31).
- 39. The failure of the Administrative Law Judge to include in his decision discussion of Nelson's October 10, 2007 altercation with LPN Percynthia Thomas (R. Ex. 63; Tr. pp. 385-387).
- 40. The failure of the Administrative Law Judge to include in his decision discussion of LPN Thomas' October 13, 2007 complaint regarding Nelson (R. Ex. 64; Tr. pp. 389-390).
- 41. The failure of the Administrative Law Judge to analyze in his decision whether Nelson's misconduct violated the Company's Code of Conduct (R. Exs. 18-20; Tr. pp. 105-108, 205).
- 42. The failure of the Administrative Law Judge to consider in his decision Nelson's admission that her misconduct violated the Company's Code of Conduct (Tr. pp. 124-125).
- The failure of the Administrative Law Judge to consider in his decision evidence that the Facility was on the verge of losing two RNs, who directly attributed their potential resignation to Nelson's misconduct (R. Ex. 53, 54, 56, 57; Tr. pp. 235-236, 249, 311-313, 347-348, 352-353).
- 44. The failure of the Administrative Law Judge to consider in his decision Nelson's admission that Warden Adams stated to her during his discharge meeting with Nelson that Nelson was discharged because of a variety of complaints from a number of employees (R. Ex. 58; Tr. p. 151).

- 45. The failure of the Administrative Law Judge to analyze in his decision the evidence that other employees who engaged in concerted activities, but who did not engage in similar misconduct as Nelson, were not disciplined or discharged (GC Ex. 9; Tr. pp. 160, 172-173, 175).
- 46. The failure of the Administrative Law Judge to analyze in his decision the evidence that the Company encourages employees to utilize its grievance process and that it does not discipline employees who do so (Tr. pp. 255-256).
- 47. The failure of the Administrative Law Judge to consider the passage of time between Nelson's grievances (in October 2007 and February 2008) and her discharge in his analysis of whether Nelson's discharge was unlawfully motivated (GC Ex. 2, 13, R. Ex. 4).
- 48. The failure of the Administrative Law Judge to consider in his decision evidence that other employees who filed numerous grievances (some as many as Nelson) were not disciplined or discharged for filing those grievances (Tr. pp. 440-442).
- 49. The failure of the Administrative Law Judge to consider in his decision Warden Adams' "talking points" in context (R. Ex. 58; Tr. pp. 257-258).
- 50. The failure of the Administrative Law Judge to consider the passage of time between a Respondent official's alleged "troublemaker" statement and Nelson's discharge in his analysis of whether Nelson's discharge was unlawfully motivated (Tr. pp. 43-44, 430-431).
- 51. The failure of the Administrative Law Judge to consider the subsequent intervening events that took place between a Respondent official's alleged "troublemaker" statement and Nelson's discharge in his analysis of whether Nelson's discharge was unlawfully motivated (R. Exs. 53, 54, 55; Tr. pp. 186-187, 189, 190-191, 192, 193, 235-236, 245-248, 252, 255, 276, 311-313, 327-328, 347-348, 352-353, 400).
- 52. The failure of the Administrative Law Judge to consider the close friendship between Health Services Administrator Johnson and Nelson in his analysis of whether Johnson's job recommendation for Nelson was evidence of unlawful motivation for Nelson's discharge (Tr. pp. 245, 254, 431-432).
- 53. The failure of the Administrative Law Judge to consider that Respondent did not consider Health Services Administrator Johnson's views of Nelson in making the decision to discharge Nelson or that Johnson was not a decision-maker in his analysis of whether Johnson's job recommendation for Nelson was evidence of unlawful motivation for Nelson's discharge (Tr. pp. 197-198, 214, 219-220, 254-255, 286).
- 54. The failure of the Administrative Law Judge to consider Nelson's admission that her misconduct violated the Respondent's Code of Conduct and warranted discharge in his analysis of whether the Respondent showed that it would have discharged Nelson even in the absence of her concerted activities (Tr. pp. 124-125).

- 55. The failure of the Administrative Law Judge to consider evidence of the Company's investigation into Nelson's post-discharge grievance, which confirmed that Nelson was disruptive in the Medical Department, in his analysis of whether the Respondent showed that it would have discharged Nelson even in the absence of her concerted activities (R. Ex. 24; Tr. pp. 202-204, 393-394).
- 56. The failure of the ALJ to analyze the evidence that other employees who engaged in misconduct, some not as egregious as Nelson's, were disciplined or discharged for that misconduct in his analysis of whether the Respondent showed that it would have discharged Nelson even in the absence of her concerted activities (R. Ex. 48).

Respectfully submitted,

James M. L. Ferbet, Esq.

Tracy Stott Pyles, Esq.

LITTLER MENDELSON, P.C.

21 East State Street, Suite 1600

Columbus, OH 43215

Tel. (614) 463-4201

Fax (614) 221-3301

jferber@littler.com

tpyles@littler.com

LITTLER MENDELSON, P.C.

3344 Peachtree Road, NE, Suite 1500

Atlanta, GA 30326

Tel. (404) 233-0330

Fax (404) 233-2361

scwilliams@littler.com

Attorneys for Respondent Corrections
Corporation of America

Dated: May 1, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2009, the foregoing was filed with the Executive Secretary's Office of the National Labor Relations Board, electronically by using the E-Filing system on the Board's website, and that on this same date an original and eight paper copies were served by overnight mail, prepaid, upon:

Les Heltzer, Executive Secretary National Labor Relations Board 1099 14th Street, NW Washington, DC 20570-0001

And on this same date the foregoing was served via electronic mail and by overnight mail, prepaid, upon the following:

Counsel for the General Counsel Christopher J. Roy, Field Attorney National Labor Relations Board, Region 26 The Brinkley Plaza Building 80 Monroe Avenue, Suite 350 Memphis, TN 38103-2416

And on this same date the foregoing was served via overnight mail, prepaid, upon the following:

Ronald K. Hooks, Regional Director National Labor Relations Board, Region 26 The Brinkley Plaza Building 80 Monroe Avenue, Suite 350 Memphis, TN 38103-2416

Vevria Nelson 1015 Lindsey Avenue, Apt. A Greenwood, MS 38930

James M. L. Ferber

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